

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23<sup>rd</sup> day of May, two thousand sixteen.

**PRESENT:**

JOHN M. WALKER, JR.,  
BARRINGTON D. PARKER,  
CHRISTOPHER F. DRONEY,  
*Circuit Judges.*

XIANGLAN CUI,  
*Petitioner,*

v.

LORETTA E. LYNCH, UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

15-1670  
NAC

**FOR PETITIONER:**

Guang Jun Gao, Esq., Flushing, New York.

**FOR RESPONDENT:**

Benjamin C. Mizer, Principal Deputy Assistant Attorney General; Paul Fiorino, Senior Litigation Counsel; Deitz P. Lefort, Trial Attorney; Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1       UPON DUE CONSIDERATION of this petition for review of a  
2 Board of Immigration Appeals ("BIA") decision, it is hereby  
3 ORDERED, ADJUDGED, AND DECREED that the petition for review is  
4 DENIED.

5       Petitioner Xianglan Cui, a native and citizen of the  
6 People's Republic of China, seeks review of a May 4, 2015,  
7 decision of the BIA denying her untimely motion to reopen. *In*  
8 *re Xianglan Cui*, No. A099 934 507 (B.I.A. May 4, 2015). We  
9 assume the parties' familiarity with the underlying facts and  
10 procedural history in this case.

11       We review the BIA's denial of a motion to reopen "for abuse  
12 of discretion." *Ali v. Gonzales*, 448 F.3d 515, 517 (2d Cir.  
13 2006) (per curiam). When the BIA considers relevant evidence  
14 of country conditions in evaluating a motion to reopen, we  
15 review the BIA's factual findings under the substantial  
16 evidence standard. *Jian Hui Shao v. Mukasey*, 546 F.3d 138, 169  
17 (2d Cir. 2008).

18       It is undisputed that Cui's motion to reopen was untimely.  
19 Her February 2015 motion was filed nearly two years after the  
20 final administrative order of removal was issued in May 2013.  
21 8 U.S.C. § 1229a(c)(7)(C)(i) (setting 90-day period for filing  
22 motion to reopen); 8 C.F.R. § 1003.2(c)(2) (same). This time

1 limitation may be excused if the motion "is based on changed  
2 country conditions arising in the country of nationality or the  
3 country to which removal has been ordered, if such evidence is  
4 material and was not available and would not have been  
5 discovered or presented at the previous proceeding," 8 U.S.C.  
6 § 1229a(c)(7)(C)(ii), but the BIA reasonably concluded that Cui  
7 failed to establish changed conditions for pro-democracy  
8 activists in China.

9       Substantial evidence supports the BIA's determination that  
10 the Chinese government's treatment of political  
11 dissidents—which included harassment, arrests, and  
12 detention—was a continuation of conditions existing at the time  
13 of Cui's 2010 hearing before the IJ. *See In re S-Y-G-*, 24 I.  
14 & N. Dec. 247, 253 (BIA 2007). While Cui's evidence includes  
15 specific reports of arrests of 50 people during a crackdown on  
16 protest activity, the same report from Amnesty International  
17 refers to a continuation of persecution. The U.S. Department  
18 of State's 2012 Country Report on Human Rights Practices further  
19 supports the BIA's conclusion that conditions had not changed;  
20 it reported that pro-democracy groups "remained banned, and the  
21 government continued to monitor, detain, and imprison current  
22 and former [Chinese Democracy Party] members." The 2011 and

1 2012 reports of the Congressional-Executive Commission on China  
2 similarly report that detention, harassment, and intolerance  
3 "remained commonplace." Given this record evidence the BIA  
4 reasonably concluded that there had been no material change in  
5 the treatment of pro-democracy activists in China. See 8  
6 U.S.C. § 1229a(c)(7)(C)(ii).

7 To the extent that Cui alleged a change particular to  
8 herself—the Chinese government's awareness of her political  
9 activity in the United States—the BIA did not abuse its  
10 discretion in declining to give weight to her evidence. See  
11 *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 342 (2d  
12 Cir. 2006) (stating that weight given corroborating evidence  
13 lies largely with discretion of agency). Moreover, the  
14 reliability of the letters was undermined by the underlying  
15 adverse credibility determination. See *Qin Wen Zheng v.*  
16 *Gonzales*, 500 F.3d 143, 146-48 (2d Cir. 2007) (upholding  
17 agency's refusal to credit applicant's individualized evidence  
18 supporting motion to reopen given adverse credibility  
19 determination in underlying proceedings).

20 To the extent Cui now challenges the immigration judge's  
21 adverse credibility determination in her brief, it is not  
22 properly before us; we previously denied her petition

1 challenging that decision. *See Johnson v. Holder*, 564 F.3d 95,  
2 99 (2d Cir. 2009). Because a showing of changed country  
3 conditions is a prerequisite to reopening, the BIA did not abuse  
4 its discretion in denying the motion. We decline to reach the  
5 BIA's alternative ruling that Cui failed to demonstrate her  
6 prima facie eligibility for asylum. *See INS v. Bagamasbad*, 429  
7 U.S. 24, 25 (1976) (per curiam).

8 For the foregoing reasons, the petition for review is  
9 DENIED. As we have completed our review, any stay of removal  
10 that the Court previously granted in this petition is VACATED,  
11 and any pending motion for a stay of removal in this petition  
12 is DISMISSED as moot. Any pending request for oral argument  
13 in this petition is DENIED in accordance with Federal Rule of  
14 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
15 34.1(b).

16 FOR THE COURT:  
17 Catherine O'Hagan Wolfe, Clerk